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December 12, 1994

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

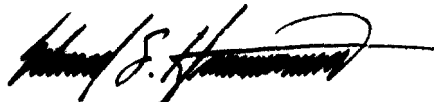
Re: Ex-Parte Letter in MM Docket No. 92-266

Dear Mr. Caton:

In accordance with the Commission's ex parte rules, 47 C.F.R. §§ 1.1204(b) and 1.1206(a)(1), an original and two copies of this letter are being filed in MM Docket No. 92-266, as notification that on December 8, 1994, Stephen Brenner, Esq., Executive Vice President, Business Affairs, Operations and General Counsel of USA Networks, wrote a letter to Meredith Jones, Chief of the Cable Services Bureau, to support the confidentiality of programmer affiliation agreements. Copies of the letter to Ms. Jones are submitted herewith.

Kindly place this material in the public file.

Very truly yours,



Edward S. Hammerman

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USA | NETWORKS

Stephen A. Brenner
*Executive Vice President, Business Affairs,
Operations and General Counsel*

December 8, 1994

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DEC 12 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Meredith Jones, Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 918
Washington, DC 20554

Re: Programming External Costs - Confidentiality of Programmer Affiliation
Agreements

Dear Ms. Jones:

It has come to USA Networks' attention that there are several letter requests before the Commission asking for a clarification of the external cost rule (Section 76.922(d)(3)) and confirmation that cable operators are not required to supply individual programming contracts to local franchising authorities. We strongly support the position that the cable operators have taken in such letters.

The confidentiality of program affiliation agreements is of extraordinary importance to cable networks, like USA on two distinct levels - first as to other cable operators and, second, as to other cable networks. USA Networks and virtually all of its competitors insist upon strict confidentiality provisions in all of its affiliation agreements. Our affiliation agreements with cable operators are the result of vigorous negotiations and hard bargaining. While MSO-wide programming contracts are the norm, each of these contracts is separately negotiated and no two of them are alike. These differences go far beyond price terms; the differences encompass all of the substantive terms of these agreements. Indeed there are whole subject matters which loom as crucial to a particular MSO that are not even raised by another MSO. Many issues are traded in one agreement, but not in others. If the terms of our agreements with other MSOs were to become public, our positions with other operators would be severely compromised.

It also is crucial that our network competitors not be given access to the sensitive information and competitive strategies reflected in these contracts. Similarly, we cannot be in a position in which franchising authorities seek to second guess our arrangements with our affiliates or why certain benefits were not obtained by their local operator. These arrangements result from aggressive arms length bargaining. Indirect disclosure of sensitive information, through rate regulation, will seriously undermine the intense competition among cable networks.

There are no countervailing policy reasons for the FCC to abrogate the confidentiality of program affiliation agreements. Whatever the need for "accountability" of cable operator calculations of rate increases based upon external cost increases, the remedy of disclosure of contracts far exceeds the problem. Under the Commission's rules and the forms, rate increases, based upon external costs, are calculable on the aggregate increase (or decrease). Thus, the claims that disclosure is required for the sake of accountability assumes that cable operators either will falsify the numbers or cannot make the calculations correctly, or both. Falsification carries with it the potential for criminal, as well as refund liability, as the FCC form itself makes clear. Surely, the possibility of computational error cannot warrant the harm that the Commission will do to competition in the cable programming industries if it declines to respect the confidentiality of programmer affiliation contracts. Thus, if it is a problem at all, accountability can be dealt with by requiring verification of the computation by the cable operator's accounting firm or, in the rare case in which the operator does not have a regular accountant, through in-camera inspection of the document by the Commission itself.

We urge that the confidentiality of cable network affiliation contracts be respected and protected.

Very truly yours,

A handwritten signature in cursive script, reading "Stephen A. Brenner".

Stephen A. Brenner

cc: Ian Volner, Esq.